IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No.9587 of 2006

For Approval and Signature:
HONOURABLE MR.JUSTICE D.A.MEHTA Sd/-

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	**NO**
2	To be referred to the Reporter or not ?	**NO**
3	Whether their Lordships wish to see the fair copy of the judgment ?	**NO**
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?	**NO**
5	Whether it is to be circulated to the civil judge ?	**NO**

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PANCHJANYA EDUCATION AND RESEARCH TRUST & 1-Petitioner(s)
Versus
HEMCHANDRACHARYA NORTH GUJARAT UNI. & 1-Respondent(s)

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Appearance :
MR BS PATEL for Petitioner(s) : 1 - 2.MRS RANJAN B PATEL for Petitioner(s) : 1 - 2.
MR MITUL K SHELAT for Respondent(s) : 1,
MR HEMANG H PARIKH, AGP for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA
Date : 26/11/2007
ORAL JUDGMENT

(1) This petition has been filed praying for following reliefs:

“9. On the facts and circumstances mentioned hereinabove, the petitioners pray to Your

Lordships that:

A) be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction commanding the respondent university not to treat the college run by the petitioner trust as non-affiliated college and also commanding the respondent university to take examinations of the students who have prosecuted their study in the academic year 2005-2006.

B) Pending admission and final disposal of the petition as interim measure on such terms and conditions, this Honourable Court may be pleased to direct the respondent university by mandatory orders to take examinations of the students who have prosecuted their study in the college run by the petitioner trust in the academic year 2005-2006 and who have got enrollment numbers;

C) be pleased to award the cost of this petition;

D) such other and further relief that is just, fit and expedient in the facts and circumstances of the case may be

granted."

(2) Subsequently vide amendment granted on 11.10.2006 following additional relief was prayed for:

"(AA) Your Lordships will be pleased to issue a writ of certiorari or a writ in the nature of certiorari or any other appropriate writ, order or direction quashing and setting aside the letter along with the resolution at Annexure-W to the petition and also the letter at Annexure-Z dated 31.1.2005."

(3) The petitioner-Trust is running one Panchjanya Institute of Commerce and Management Studies (the College). The college commenced B.B.A. Course from Academic Year 2002-2003 and B.Com. Course from Academic Year 2003-2004. The application moved by the petitioner for affiliation came to be granted by the State Government vide notification dated 09.07.2004 whereunder affiliation for B.B.A. Course was granted for the period 15.06.2002 to

14.06.2003.

(4) It appears that thereafter some complaints came to be made against the petitioner and hence, the respondent-University initiated action by communication dated 23.02.2005 not to grant admission for Academic Year 2005-2006 followed up by a public advertisement. Ultimately it appears that from Academic Year 2005-2006 the petitioner was treated as running a college without affiliation and hence, no examinations were permitted to be taken by the students alleged to have studied with the college run by the petitioner-Trust. Hence, the petition.

(5) Learned advocate for the petitioners has assailed the action of the respondent-University in not deciding the application for affiliation within a reasonable time leading to the petitioner entertaining a *bona fide* impression that affiliation had been granted. According to the learned advocate for the

petitioners, such impression was based on the factum of non-refund of the application money, non-rejection of the application within time and the fact that the students had been enrolled by the respondent-University.

1. Referring to provisions of Section 35 of the North Gujarat University Act, 1986 (the Act) it was submitted that the statute did not envisage any granting of temporary or annual affiliation and once affiliation was granted the same continued till the same was withdrawn / cancelled as provided under Section 41 of the Act. That the only provision which envisaged extension of affiliation was Section 36 of the Act but the same was only in relation to commencing of new / additional course and had no relevance with the existing courses and, therefore, the petitioner derived support vis-a-vis the principal submission that affiliation granted once enured permanently. Referring to Section 41 of the Act it was submitted that the said provision required granting an opportunity

of hearing before affiliation could be cancelled / withdrawn and the said exercise having not been carried out, the resolution dated 22.08.2006 passed by the Executive Council of the respondent-University was bad in law and was required to be quashed and set aside. In support of the submissions made reliance has been placed on Apex Court decision in the case of *Murarilal Jhunjhunwala Vs. State of Bihar & Ors.*, AIR 1991 Supreme Court 515 to submit that if the affiliation is not granted within reasonable time the petitioner was entitled to raise a presumption that the affiliation had been granted. Lastly it was submitted that the past conduct of the respondent authorities, more particularly the respondent-University, prevented the respondent-University from resisting the petition as the respondent-University itself had conducted examinations of students despite the fact that it was only on 29.11.2006 that the State Government had granted affiliation

with retrospective effect for the period 15.06.2003 to 14.06.2005 encompassing two Academic Years. That till this point of time, if the affiliation was not in existence, the respondent-University could not have conducted the examinations and, therefore, today the respondent-University must be commanded to conduct the examinations of the students for Academic Year 2005-2006, the students having prosecuted their studies during the said Academic Year.

(6) On behalf of the respondent-University, after referring to the prayers made in the petition, attention was invited to the affidavit-in-reply dated 27.12.2006 to point out the following sequence of events:

	The petitioner's BBA College commenced from the academic year 2002-2003 and B. Com. College from the academic year 2003-2004.

26-7-2004	The University received complaints regarding malpractices being undertaken by the petitioner in its College. And therefore, it informed the petitioner not to grant admissions in the 1st year BBA and 1st year B.Com course.
27-10-2004	The University received complaints that the College was charging fees of Rs.26500/- per student per year as against the fees of Rs.10000/- per student per year determined by the State Government. The petitioner was therefore called upon to deposit the excess fees with the University.
23-2-2005	The University informed the petitioner that it should not grant any admissions for the academic year 2005-06 and responsibility for admissions granted shall be entirely of the College. Similar advertisement was also issued in various daily newspapers.
13-4-2005	The University informed the petitioner to forthwith deposit the excess fees collected by it and to ensure that students studying in the 2nd year & 3rd year are transferred to other Colleges and no new admissions are granted in the said year.

18-5-2005	The University published another advertisement informing the public at large not to accept any admission in the petitioner Colleges.
10-8-2005	The University received a letter from the petitioner stating inter-alia that it had commenced its classes for the 3rd year B.Com & BBA course in Sharda Mandir School.
31-8-2005	The University published public advertisement declaring that the College has started without affiliation and complete responsibility shall be of the College for the same.
1-9-2005	The University issued a show-cause notice to the College seeking its explanation as to how it had commenced classes when it did not have any affiliation from the University.
30-12-2005	The University issued notice calling upon the petitioner to explain its conduct falling which criminal proceedings would be instituted against the petitioner.

22-3-2006	The students studying in the Colleges run by the petitioner approached this Hon'ble Court challenging inter-alia the action of the University in not granting enrollment and in not permitting them to appear in the examinations conducted by the University. In the said proceedings the petitioner was a party and had argued that once it had applied for affiliation and no decision was rendered thereon, the affiliation would deemed to have continued, and therefore, the University should permit the students to appear in the examination. This Hon'ble Court after recording detailed reasons was pleased to dismiss the petition.

5-4-2006	The petitioner preferred an appeal against the said judgment. The appellate Court declined to interfere with the impugned order. It however permitted the petitioner to approach the University and directed the University to dispose of the application in accordance with law. Though the petitioner was a party to the proceedings and was substantially heard, a false statement was made before the Court that they did not get an opportunity of hearing before the learned Single Judge.
	The application of the petitioner was placed before the Executive Council after considering the record of the proceedings, the application, the reports, recommended to the State Government to grant affiliation upto the academic year 2004-2005.
	The said recommendation was submitted to the State Government for its decision under Sec.35, sub-section 6 of the North Gujarat University Act and the State Government has issued the notification accepting the recommendation of the University.

(7) It was submitted that all the contentions raised by the petitioner were raised by the petitioner as respondent No.2 in a group of petitions filed by the students being Special Civil Application No.5053 of 2006 and cognate petitions as can be seen from Paragraph No.6 of the order dated 22.03.2006 made by this High Court, and that each of the contentions have been dealt with and rejected. Therefore, the petitioner was not entitled to agitate the same issue once again. That the order of the learned Single Judge had been confirmed by Division Bench vide order dated 05.04.2006 in Letters Patent Appeal No.606 of 2006 and cognate LPAs, except for the following observations in Paragraph No.3 of the order:

> "3. In view of the facts brought on record by the learned Single Judge in paragraph No.7, we see no justification to interfere in the impugned order. The appellant is directed to approach the respondent -University and the respondent-University is directed to dispose of the application

for affiliation in accordance with law. However, it is made clear that the respondent-University may not be prejudiced by the observations and/or findings made by the learned Single Judge as the learned Counsel for the appellant submits that he did not get an opportunity of being heard from the learned Single Judge. We also make it clear that in case an adverse decision is taken by the University on the application for affiliation the appellant is at liberty to approach again this Court. In view of the above facts there is no substance in the appeals the same are dismissed."

That pursuant thereto the Executive Council of the respondent-University had met and after due deliberation recommended to the State Government to – (**A**) grant affiliation for the period 15.06.2003 to 14.06.2005; (**B**) and after affiliation is granted by the State Government as per (A) hereinabove, no further processing of application for affiliation for any other subsequent Academic Year should be undertaken; AND (**C**) the fees accompanying application moved by the petitioner for affiliation from

June 2005 onwards should not be accepted and the draft presented by the petitioner should be returned. Thereafter vide resolution dated 29.11.2006 notification was issued as per recommendation made by the respondent-University and thus the application moved by the petitioner-Trust for affiliation from Academic Year 2005-2006 onwards stood rejected by the State Government.

7.1) A further contention was to the effect that the petitioner should not be heard to state that the provisions did not require seeking of affiliation every year because in fact the petitioner itself had understood the provisions of the statute accordingly and moved applications for Academic Years 2003-2004 and 2004-2005 as can be seen from the pleadings made in Paragraph Nos.3.4 and 3.5 of the petition which read as under:

“3.4 In the year 2003-2004 as per the Ordinance of the respondent university, the petitioner trust submitted the application

for extension / renewal of the affiliation by depositing Rs.30,000/-. ...”

“3.5 The petitioners state that again for the academic year 2004-2005, the petitioner trust submitted the application for extension by depositing fees of Rs.30,000/- with the respondent university. ...”

(8) The learned advocate for the petitioner in rejoinder submitted that it was correct that the respondent-University had intimated the petitioner not to admit students but the students had already been admitted in past and fresh admission had not been granted after the letter was received from the respondent-University. That the students who had already been enrolled by the respondent-University in past had a right vested in them and their enrollment could not have been cancelled without following procedure as laid down in Section 54 of the Act. For this purpose attention was also invited to the communication dated 06.06.2006 from the

respondent-University as well as Minutes of Meeting held on 18.05.2006 by the Executive Council annexed with the said communication. He, therefore, urged that the petitioner was entitled to claim continuation of affiliation which had already been granted.

(9) Section 35 of the Act deals with the procedure for seeking affiliation. Sub-section (1) of Section 35 of the Act talks of a college applying for affiliation to send a letter of application to the Registrar. Thereafter the remaining sub-sections lay down the procedure for dealing with the application moved by an applicant-college. It is only under Section (6) of Section 35 of the Act that granting or rejection of the application is provided for and the said sub-section reads as under:

> “(6) Where the application or any part thereof is granted, the order of the State Government shall specify the courses of the instructions in respect of which the college is affiliated and where the application or any part thereof is refused, the grounds of

such refusal shall be recorded."

(10) On a plain reading it becomes apparent that the State Government is empowered to either grant or refuse an application or any part thereof. Therefore, the principal submission on behalf of the petitioner-Trust that there is no provision for granting a conditional or temporal affiliation does not merit acceptance. An application for affiliation can be granted conditionally, it can be granted in entirety, it can be granted in part. Namely, the application can be restricted for a period though the application may be for a permanent affiliation.

(11) Once this is the position the only thing that is required to be seen is whether the petitioner was granted permanent affiliation, and only if the answer is in the affirmative, would the question arise for consideration under Section 41 of the Act dealing with cancellation / withdrawal of affiliation. In

the present case, as noted hereinbefore, admittedly initial affiliation was granted only for one Academic Year, namely, 15.06.2002 to 14.06.2003 vide notification dated 09.07.2004. Subsequently the said affiliation has been extended vide notification dated 29.11.2006 for subsequent two Academic Years, namely 15.06.2003 to 14.06.2005. The submission made on behalf of the respondent-University that the said decision of the State Government has not been challenged has not been controverted on behalf of the petitioner. Therefore, the contention that the respondent-University cannot take a decision to cancel / withdraw the affiliation granted does not merit acceptance as there is no cancellation / withdrawal of any affiliation for Academic Year 2005-2006, no such affiliation for the said academic year having ever been granted.

(12) In the aforesaid fact situation, the Apex Court decision, on which reliance has been

placed on behalf of the petitioner, also cannot assist the case of the petitioner.

(13) It is an accepted position that (except for 6 or 7) the students enrolled have already been transferred to other affiliated colleges. Therefore, nothing turns on this fact. Even otherwise, mere enrollment of students by the University does not result in vesting of any right in any college to seek affiliation.

(14) In the circumstances, the petition does not merit acceptance on any of the grounds pleaded and is accordingly rejected. NOTICE discharged. The petitioners shall pay costs quantified at a sum of Rs.5,000/- (Rupees Five thousand only).

Sd/-
[D.A. MEHTA, J]

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Bhavesh*